



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM

AUG 6 1987

SUBJECT: Draft of the RCRA Authority/Corrective Action
Guidance (UICPG #57)

FROM: *for* Paul M. Baltay, Director
State Programs Division (WH-550E) *John R. Duax*

TO: Water Supply Branch Chiefs
UIC Section Chiefs
Regions IV - X

Please review and send us comments on the attached draft by August 24, 1987. Please note that we have not included the attachments to the guidance at this time. Our January 16 and April 17, 1987, memoranda explain criteria for interim status under RCRA (Attachment A in Guidance #57). As for the MOU/MOA, we intend to use the ones that some of the Regions are already negotiating, as the basis for the boiler plate. If you have any experience/ideas for the MOU/MOA please inform us.

Send your comments to Mario Salazar of my staff. His phone number is (FTS) 382-5561.

Attachment

cc: Ellen Berick, OECM (LE-134W)
Michelle Anders, OSW (WH-563)
Ken Jennings, OSW (WH-527)
John Atcheson, HWIRTF

DRAFT**AUG 6 1987**MEMORANDUM

SUBJECT: RCRA Authority and Corrective Action Under
3004(u) as Applicable to the UIC Program -
UIC Program Guidance #57

FROM: Michael B Cook, Director
Office of Drinking Water

TO: Water Division Director
Water Supply Branch Chiefs
UIC Section Chiefs
Regions IV - X

I. Background

The Hazardous and Solid Waste Amendments (HSWA) of 1984 included a requirement for corrective action (CA) for all continuing releases to be applicable to all Solid Waste Management Units (SWMU) in a subtitle "C" facility. In the UIC program it translates into requiring CA for all SWMU in all Class I-H (hazardous waste) facilities as part of Part B permit requirements (RCRA Subtitle "C" facility permit).

The Office of Drinking Water issued Guidance #45 on April 9, 1986 to aid the Regions in the implementation of CA in the UIC program. Later on August 4, 1986, a joint memorandum from Marcia Williams and myself, in fact, revised the approach expressed in Guidance #45. This guidance, the third on the subject, represents a revised approach to solving the CA issues. It is loosely based on the prior memoranda and reflects the current thinking in the Office of Solid Waste (OSW) with respect to CA for injection wells. We are confident

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that the information in this guidance is an accurate representation of the ultimate approach by OSW for compliance of the CA requirements in the UIC program.

Current policy is that the requirements of §3004(u) will be applied formally as part of the Part B permit, except in cases where the UIC permit is the only one that the facility requires. As one consequence, wells injecting hazardous waste will generally have to have a valid UIC permit and interim status under RCRA to operate legally.

Quite aside from the requirements of §3004(u), it is ODW policy that the owner or operator of a well injecting hazardous waste cannot make the complete demonstration of non-endangerment required under the Safe Drinking Water Act unless he has evaluated the possibility of prior or continuing releases and has taken or has committed to take appropriate actions to correct any environmental damage. Therefore, I believe that the "corrective action" (CA) concept should be applied to releases from wells injecting hazardous waste if it has not already been applied. We are negotiating a memorandum of agreement with the Office of Solid Waste under which OSW would accept these reviews and actions in partial (for releases from the well itself) satisfaction of the §3004(u) requirements when the Part B permit is processed.

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Since January 16, 1987 we have sent you two verification memoranda to determine the RCRA status of all Class I-H wells, and a third memorandum to obtain your comments on the final draft guidance. The information that you have provided has been used to generate this document.

II. Purpose

The purpose of this guidance is to: 1) define the status of all Class I-H wells with respect to RCRA; 2) To identify needs and priorities and to define the sequence of events leading to compliance with RCRA 3004(u); and, 3) To provide a sample memorandum of understanding/agreement (MOU/MOA) between the UIC office and its RCRA counterpart in the Regions to allow the UIC personnel to take the lead in the generation of information for compliance with 3004(u) for the injection wells.

III. Guidance

A. Status

The decision on when CA has to be implemented in a well depends in a big extent on whether it is operating in compliance with RCRA requirements. Class I-H wells have to qualify for either "interim status" (IS) or "permit by rule" to operate legally under RCRA. In general, if a well is operating under IS or "permit by rule", it only has to address CA during the part "B"

permit process. If this is not the the case however, CA for all SWMUs would have to be done (making the UIC permit a RCRA permit by rule) before the well can operate legally under RCRA. Attachment A is a decision tree to determine whether a well is operating under IS or permit by rule or whether it is not operating legally under RCRA. This test has been applied to all non-abandoned Class I-H wells with the following results: (Tables referenced can be found in attachment B.)

<u>Type</u>	<u>Number</u>	<u>Table</u>
1. Wells with IS(A) ^{1/}	112 wells in 51 facilities	I-A
2. Wells with IS(B) ^{2/}	5 wells in 3 facilities	I-B
3. RCRA Permit by rule(A) ^{3/}	48 wells 21 facilities	II-A
4. RCRA Permit by rule(B) ^{4/}	1 well in 1 facility	II-B
5. Without RCRA status	21 wells in 19 facilities	III
6. Undetermined	6 wells in 6 facilities	IV
1/ See section A of decision tree		
2/ See section B of decision tree		
3/ See section C of decision tree		
4/ See section D of decision tree		

B. Needs, Priorities, Sequence

1. Wells in A.2. above (IS (B)) have to meet a very strict set of conditions. To date no evidence has been sent to this office to substantiate claims for these wells. We logically have to assume that the wells in question have lost interim status. As indicated in the decision tree, the only structured way for these wells to return to legal operation under RCRA is for

CA to be addressed for all SWMU in the facility under the authority of RCRA (see also 5. below). Currently they may be operating illegally and may be subject to enforcement action including closure. Attachment "C" includes a memorandum of understanding/agreement MOU/MOA which delegates some of the responsibilities for CA to the UIC office in the Region.

2. Wells in A.5. and possibly A.6. above will also have to address CA for all SWMU at the facility in order to return to compliance with RCRA requirements. Currently they may be operating illegally and may be subject to enforcement action including closure. The memorandum in attachment "C" also addresses these.
3. The wells that can legally retain IS will have to address CA during the RCRA Part B permit process. The UIC program office in the Regions is encouraged to use the MOU/MOA in attachment "C" to define the responsibilities to assist their RCRA counterparts in obtaining all the CA information for the injection wells.

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4. Guidance #45 explains the process for CA. This explanation is still valid and should be used by the Regions. In summary:
- a. A preliminary assessment consisting of paper type review is done to investigate if there have been any releases or possibility of releases;
 - b. A site investigation follows if warranted;
 - c. A remedial investigation to determine the extent of contamination and to identify proper response is performed; and,
 - d. Selection and performance of CA to be done, for the site, immediately or to be placed on a schedule of compliance.

The Office of Solid Waste has contractors available to aid them in the CA effort.

The Regional UIC offices may want to "piggyback" on this effort.

5. Under some circumstances, wells built after November 19, 1980 in a facility with existing subtitle "C" units may have IS. There is no

blanket inclusion of these wells, but rather the new well has to meet a series of tests in order for its Part A permit to be modified to include the new well. The criteria governing this inclusion are in 40 CFR 270.72 especially §270.72(d) and (e). These criteria indicate that any changes at the facility would have to have authorization by the "Director" in advance; §270.72(d) explains the reasons for the Director to approve and §270.72(e) gives the financial test that the applicant must meet. If the new well meets the criteria in §§270.72(d) and (e), then Part A can be modified to include the new well. A copy of §270.72 has been included in attachment "D".

7. Wells permitted prior to November 8, 1984 (in accordance to a program approved under Part C of the SDWA), are permits by rule under RCRA. These wells can continue to operate under RCRA without any CA until the UIC permit expires or is terminated. At this time a RCRA Part B permit that includes CA would have to be granted for the well to continue operating. The first permits to expire are the five year permits issued by the Regions and some States. The

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permits for the Dupont wells in Kentucky are the first to expire on September 23, 1989. A table indicating all the well permits which will expire prior to 1992 is included in attachment "E". The "UA" in the "EXP" column indicates that the permittee is appealing the UIC permit expiration date set by the regulatory agency.

8. As indicated in B.7. above, a UIC permit was a permit by rule under RCRA until November 8, 1984. Due to this, RCRA regulations, until July 15, 1985, included a section which terminated IS for wells which received a UIC permit. On July 15, 1985, the code rule was published deleting this section from the RCRA regulations. Therefore, permits issued between November 8, 1984 and July 15, 1985 may have terminated IS. Our OGC attorney has indicated that no action on these wells is warranted at this time since he feels the July 15, 1987, rule was retroactive to November 8, 1984. I have included a list of these wells in Attachment "F."
9. Last but not least, the UIC regulations in fact require that there be no "releases" or potential for releases prior to granting

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a permit. Therefore, the CA requirement is just a reaffirmation of the UIC permit

C. Memorandum of Understanding/Agreement (MOU/MOA)

As indicated in the first two parts of this guidance, CA will have to be done for all Class 1-H wells. Priorities will range from CA for wells that have lost IS, which need to address CA immediately, to CA for wells which are presently permitted by rule because a UIC permit was granted prior to November 8, 1984. Another factor is that CA can only be done under the authority of RCRA. Therefore, if the UIC office in the Regions decides to address CA for injection wells, it will have to come to some type of agreement with their RCRA counterparts. Attachment "C" includes a sample MOU/MOA which the Region can use to negotiate and obtain an agreement to do all or part of CA for Subtitle "C" facilities. A special case is when the well is the only Subtitle "C" unit at a facility. In such case, CA for the well would suffice the whole facility and has to include all SWMUs at the facility.

IV. Implementation

A. Priorities

1. The Regions will proceed to verify the information provided in this guidance and inform

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Headquarters of any inconsistencies. Any changes, along with justification, should be mailed to Headquarters 14 days after the date of this memorandum.

2. A MOU/MOA should be prepared and negotiated with the Region RCRA counterparts (or states when warranted); Copies of the signed MOU/MOAs should be sent to Headquarters.
3. Priority should be given to wells that have lost interim status and are otherwise in compliance with all other UIC and RCRA requirements. Staff from the RCRA national office in Headquarters have indicated that enforcement as a result of loss of interim status (LOIS) will depend on program priorities and resources. The Regional UIC offices can use LOIS to augment pressure/enforcement on a noncomplier.

B. Other RCRA Requirements

The CA effort will be implemented by RCRA through their Part "B" permitting process. There is, however, at least one more piece to this puzzle. Petitions for exemptions to prohibitions under Section 201(e) and (f) of HDWA will have to be acted on, in some capacity, by

the UIC office. A lot of the information needed for the petitions overlaps the CA information requirements. These two activities should be coordinated as much as possible.

V. Action Responsibility

The person to contact on this subject is Mario Salazar (FTS/202) 382-5561.

VI. Filing

Please file this guidance under UIC Program Guidance #57.

Attachments

cc: UIC Section Chiefs
Regions I - III